

Miriam Lens

From: Sherry Blair
Sent: Sunday, October 27, 2013 4:27 PM
To: Michael Sweeney; Francisco Zermeno - Forward; Barbara Halliday; Marvin Peixoto; Greg Jones; Al Mendall; Mark Salinas
Cc: Miriam Lens
Subject: Additional Information concerning cities and food sharing
Attachments: BANS ON FEEDING HOMELESS.doc

Dear Mayor and Councilmembers;

I thought the attached article was worth reading. The city staff is not alone in its recommendations, but neither are hungry people and their advocates who are now testing the constitutionality of those ordinances in other cities.

I look forward to more discussion at the council meeting.

Sherry Blair

Bans on Feeding the Homeless Are Discriminatory and Unconstitutional

[Baylen Linnekin](#) | Jun. 9, 2012 8:00 am

In 1921, in Boston, an activist named Urbain Ledoux—going by the moniker Mr. Zero—happened on an idea to help unemployed veterans and their families. Ledoux, leader of what he called the "Church of the Unemployed," would "auction" off the veterans in public parks. He hoped that the stark image of such auctions—which brought to mind horrific slave auctions that some still alive at the time would have witnessed in person—would galvanize the public and help find people work.

In Boston, where one such [auction](#) took place on the Common over several days, Ledoux and the veterans were overwhelmed by public support:

Small sums of cash were given daily; free food was delivered by restaurants and bakeries; an experienced cobbler set up shop to repair the shoes of the jobless; several women volunteered to sew and clean the bed linens; furniture was donated; a local dentist announced that he would take care of any toothaches that occurred among the unemployed; and.... scores, perhaps hundreds, of Ledoux's followers obtained jobs as a result of the auctions.

Ledoux and his supporters met a different fate in New York City—at least initially. City police [refused](#) to let Ledoux's group serve food. When his supporters served food in Bryant Park, police moved in and [beat](#) "forty jobless men who had gathered about six elderly women distributing sandwiches, cakes and crullers in the park." The American Civil Liberties Union launched a complaint.

And, though Ledoux stepped into the [spotlight](#) from time to time, this was largely the end of his auctioneering days.

Ninety years later, however, the issues raised by Ledoux are again making headlines and prompting litigation, even if the tactics of volunteers, police, and regulators may be a bit less stark.

Starting in about 2006, several cities began arresting, fining, and otherwise oppressing private individuals and nonprofits that feed the homeless and less fortunate. A 2006 NPR [report](#) referred to a Las Vegas ban on feeding the homeless—a ban challenged by the Nevada state ACLU chapter—as "among the first of its kind in the country."

The suit went on for four years. As the Nevada ACLU recounted in [announcing](#) a pending settlement between the group and the city in 2010:

The City began ticketing good Samaritans who shared food with more than 24 people, under the belief that giving food to people already in the public park violated statutes requiring permits for gatherings of 25 or more people. When the ACLU of Nevada took issue with this interpretation of permit laws, the City took a more direct approach: it explicitly outlawed the sharing of food with anyone who looked poor.

Terms of the Las Vegas [settlement](#) require that police may no longer ban and ticket those feeding or being fed "unless there is evidence of unlawful activity, and in those cases a valid arrest must be made or a citation issued." Which is as it should be.

Still, in spite of the suit and settlement, feeding bans like the one initiated in Las Vegas appear to be growing in number around the country.

I [blogged](#) at *Hit & Run* last summer about a ban in Orlando—the first of the most recent spate of such big-city laws. In that case, members of the anti-war group Food Not Bombs had been arrested for feeding the homeless in Orlando city parks.

Since then, other cities have followed suit. In New York City, for example, Mayor Michael Bloomberg [banned](#) food donations to the homeless earlier this year "because the city can't assess their salt, fat and fiber content." Those familiar with Mayor Bloomberg are likely only surprised here that Hizzoner missed adding [sugar](#) to the list of terribles.

In a March 2011 [piece](#) on a proposed ban on feeding the homeless in Houston, *Take Part* writer Clare Leschin-Hoar noted that the city's ban would have added a panoply of requirements for feeding the homeless there, including limiting food service to three city parks and forcing groups to "register with the city; complete food handlers training courses; prepare food in licensed kitchens; and require a cleanup plan following food service." The [ordinance](#) ultimately passed by Houston is a slightly less onerous (though still terrible) one that simply "requires permission from the city government before serving food in city parks."

As it was in Mr. Zero's day, choosing to crack down on those who volunteer to feed the homeless is a bad idea. It's an even worse idea to seize on at a time when lots of people are hungry (see [here](#), [here](#), or [here](#)), food pantries are [stretched](#) beyond the breaking point, and increasing numbers of Americans are [subsisting](#) on food stamps.

Thankfully, the latest ban to take effect—Philadelphia's, which the aptly named Mayor Michael Nutter implemented just last week—has [drawn a legal challenge](#).

As the Nevada ACLU did in Las Vegas—and the national ACLU did in New York City in the case of the police beating of Ledoux's supporters—the Pennsylvania ACLU chapter finds itself [challenging](#) "burdensome restrictions on outdoor feeding programs."

While Mayor Nutter [claims](#) the purpose of the ban is to push all "homeless feedings indoors where it is supposedly safer," the state ACLU [counters](#) that the ban was put in place "not to protect the health of the homeless but instead to protect the city's image in a tourist area."

The suit claims the ban violates the Free Exercise and Free Speech Clauses of the First Amendment and Pennsylvania's Religious Freedom Protection Act. While no doubt true, to those claims I would add that the ban violates the Freedom of Assembly, a First Amendment right that [my own research](#) has [demonstrated](#) is inextricably intertwined with the provision of food and drink (a fact I noted when quoted in the Leschin [piece](#)).

A religious group may have separate First Amendment rights to feed the homeless as part of its protected religious mission, just as a group like Food Not Bombs may have separate free-speech rights if feeding the homeless is part of a larger "bake sales versus bombers" protest. But every American enjoys assembly rights separate and distinct from any religious or speech rights—something the Pennsylvania ACLU should make clear here. After all, the U.S. Constitution guarantees the right to assemble peaceably for any reason, while the Pennsylvania Declaration of Rights [guarantees](#) that "citizens have a right in a peaceable manner to assemble together for their common good."

Restrictions on feeding the homeless are unconstitutional, discriminatory, and wrongheaded. Courts should force cities to acknowledge that members of civil society have a right to help those in need, and that those in need have a right to obtain assistance outside of government channels.

Baylen J. Linnekin, a lawyer, is executive director of [Keep Food Legal](#), a Washington, D.C. nonprofit that advocates in favor of food freedom—the right to grow, raise, produce, buy, sell, cook, eat, and drink the foods of our own choosing.